UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/747,841	12/29/2003	Hagai Katz	5760-14600	6451

35690   7590   01/23/2009
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EXAMINER
NELSON, FREDA ANN

ART UNIT	PAPER NUMBER
3628	

MAIL DATE	DELIVERY MODE
01/23/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

PTOL-90A (Rev. 04/07)

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS,
WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☐ Responsive to communication(s) filed on <u>08 October 2008</u>.

2a) ☒ This action is **FINAL.**   2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) <u>1-23</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) <u>1-23</u> is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a) ☐ All b) ☐ Some * c) ☐ None of:

      1. ☐ Certified copies of the priority documents have been received.

      2. ☐ Certified copies of the priority documents have been received in Application No. _____.

      3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage
application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

DETAILED ACTION

The amendment received on October 8, 2008 is acknowledged and entered. Claims

17 and 21-22 have been amended. No claims have been added. Claims 1-23 are

currently pending.

Response to Amendments and Arguments

Applicant's arguments filed October 8, 2008 have been fully considered but they

are not persuasive.

In response to Applicant's argument that the "cost allocation database is

changed to a different state", the Examiner respectfully disagrees. Firstly, a mere field-

of-use limitation is generally insufficient to render an otherwise ineligible method claim

patentable. Secondly, extra solution activity, such as, reciting a specific machine or a

particular transformation article in a step (i.e. data gathering or inputting) is not sufficient

to render a method claim patent eligible. Thus claims 1-10 are directed to non-statutory

subject matter and remain rejected under 35 U.S.C. 101.

In response to Applicant's argument that the cited references, taken individually

or in combination, do not teach or suggest a method comprising "determining a cost

allocation method for each of the plurality of system resources from a plurality of

available cost allocation methods, wherein each of the plurality of available cost

allocation methods defines a different way of dividing one of the determined costs, the

Examiner respectfully disagrees. Al-Hilali et al. discloses a transaction

therefore is something that can be wholly analyzed and measured at the server

application so that a per transaction cost may be ascertained in terms of the
different system resources being utilized or used (col. 10, lines 6-10). Al-Hilali et al.
further discloses that the end result is that for each given transaction, there will exist all
relevant system usage "costs" associated therewith. At this point, the methodology end
at 124 and the system resource usage measurements will have been generated or
determined for each transaction as is necessary for step 104 of FIG. 4 (col. 12, lines 27-
39). {The Examiner interprets different ways and means may be used to determine the
cost, in terms of each relevant system resource, for each of the identified transactions,
and note that for purposes of this invention it is only important that such cost has been
accurately determined to mean determining a cost allocation method for each of a
plurality of system resources from a plurality of available cost methods}.

In response to applicant's argument that the Examiner seems to argue that the
"soft costs" and "hard costs" are equivalent to a plurality of available cost allocation
methods or to different ways of dividing one of the determined costs. Applicant
respectfully disagrees because Fackre's "soft costs" and "hard costs" are actually two
different costs rather than two different cost allocation methods. The Examiner asserts
that Fackre et al. discloses whether a user is concerned about the "soft costs" of lost
productivity or the "hard costs" of costly subscription sites, the invention is useful to
quantify and allocate these costs to clients in proportion to their actual usage (Fackre;
[0009]). Fackre et al. further discloses cost allocation for *fixed cost resources* may then
be performed in which the total cost for a particular resource is *divided portionally*
among client matter numbers based on the relative time each matter consumed of the

total usage of the resource. For example, if resource Z cost a fixed $1000 per month,

client A uses resource Z 10% of the time, and client B uses the same resource 90% of

the time, then billing data may be generated attributing to client A a $100 charge and to

client B a $900 charge (Fackre; [0032]).

Examiner's Note

1.   With respect to the Official Notice taken in the previous office action, Examiner

notes the following discussion of Official Notice taken from the MPEP:

> To adequately traverse such a finding, an applicant must specifically point out the supposed
>
> errors in the examiner's action, which would include stating why the noticed fact is not considered
>
> to be common knowledge or well-known in the art. See 37 CFR 1.1 ! I(b). See also Chevenard,
>
> 139 F.2dat 713, 60 USPQ at 241 ("[I]n the absence of any demand by appellant for the examiner
>
> to produce authority for his statement, we will not consider this contention."). A general allegation
>
> that the claims define a patentable invention without any reference to the examiner's assertion of
>
> official notice would be inadequate. If applicant adequately traverses the examiner's assertion of
>
> official notice, the examiner must provide documentary evidence in the next Office action if the
>
> rejection is to be maintained. See 37 CFR 1.104(c)(2). See also Zurko, 258 F.3dat 1386, 59
>
> USPQ2d at 1697 ("[T]he Board [or examiner] must point to some concrete evidence in the record
>
> in support of these findings" to satisfy the substantial evidence test). If the examiner is relying on
>
> personal knowledge to support the finding of what is known in the art, the examiner must provide
>
> an affidavit or declaration setting forth specific factual statements and explanation to support the
>
> finding. See 37 CFR 1.104(d)(2). If applicant does not traverse the examiner's assertion of official
>
> notice or applicant's traverse is not adequate, the examiner should clearly indicate in the next
>
> Office action that the common knowledge or well-known in the art statement is taken to be
>
> admitted prior art because applicant either failed to traverse the examiner's assertion of official

notice or that the traverse was inadequate. If the traverse was inadequate, the examiner should

include an   explanation as to why it was inadequate. (MPEP § 2144.03(C)).

Applicant has not "specifically pointed out the supposed errors in the Examiner's

action, which would include stating why the noticed fact is not considered to be common

knowledge or well-known in the art." For these reasons, the limitations for which Official

Notice was taken in claim 6 is considered to be admitted prior art because Applicant has

not proffered an adequate traversal.

Claim Rejections - 35 USC § 101

2.   35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-10 are rejected under 35 U.S.C. 101 because the claimed invention is

directed to non-statutory subject matter.

Claims 1-10 are directed to a series of steps. In order for a series of steps to be

considered a proper process under § 101, a claimed process should either: (1) be tied

to another statutory class (such as a particular apparatus) or (2) transform underlying

subject matter (such as an article or materials). *Diamond v. Diehr*, 450 U.S. 175, 184

(1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S.

63, 70 (1972). Thus, to qualify as patent eligible, these processes must positively recite

the other statutory class to which it is tied (e.g., by identifying the apparatus that

accomplishes the method steps), or positively recite the subject matter that is being

transformed (e.g., by identifying the product or material that is changed to a different

state). Claims 1-10 identify neither the apparatus performing the recited steps nor any

transformation of underlying materials, and accordingly are directed to non-statutory

subject matter.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

3.   **Claims 1-2, 3-9, 17, 19-21, 23** are rejected under 35 U.S.C. 103(a) as being

unpatentable over Al-Hilali et al. (US Patent Number 6,086,618), in view of Fackre et al.

(US PG Pub. 2004/0030575).

As per claims 1 and 11, Al-Hilali et al. disclose a method for allocating resource

usage costs in a computer system comprising a plurality of system resources, the

method comprising:

determining a cost for each of the plurality of system resources (col. 4, lines 10-

16);

determining a cost allocation method for each of the plurality of system resources

from a plurality of available cost allocation methods (col. 11, lines 44-52) {The Examiner

interprets different ways and means may be used to determine the cost, in terms of

each relevant system resource, for each of the identified transactions, and note that for

purposes of this invention it is only important that such cost has been accurately

determined to mean determining a cost allocation method for each of a plurality of

system resources from a plurality of available cost methods};

        determining resource usage by an organizational unit for each of the plurality of

system resources (col. 1, lines 10-16); and

        programmatically determining a cost of resource usage by the organizational

unit based on the cost for each of the plurality of system resources, the cost allocation

method for each of the plurality of system resources, and the resource usage by the

organizational unit for each of the plurality of system resources (col. 4, lines 10-16).

        Al-Hilali et al. does not expressly disclose wherein each of the plurality of

available cost allocation methods defines a different way of dividing one of the

determined costs; and storing the cost in a cost allocation database.

        However, Fackre et al. disclose whether a user is concerned about the "soft

costs" of lost of productivity or the "hard costs" of costly subscription sites, the invention

is useful to quantify and allocate these costs to clients in proportion to their actual usage

([0009]). Fackre et al. further discloses in a reporting module, enhanced reporting,

including detail and summary reports by user and/or by billing code are available using

well-known relational database table functions; cost allocation for fixed cost resources

may then be performed in which the total cost for a particular resource is divided

portionally among client matter numbers based on the relative time each matter

consumed of the total usage of the resource; and for example, if resource Z cost a fixed

$1000 per month, client A uses resource Z 10% of the time, and client B uses the same

resource 90% of the time, then billing data may be generated attributing to client A a $100 charge and to client B a $900 charge ([0032]).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Al-Hilali et al. to include the feature of Fackre et al. in order to store/save costs in a cost allocation database for easy retrieval of cost information.

As per claims 2 and 12, Al-Hilali et al. disclose the method of claim 1, wherein each of the plurality of system resources comprises one or more cost elements, and wherein a cost allocation method is determined for each of the one or more cost elements (col. 2, lines 53-65).

As per claims 5 and 13, Al-Hilali et al. disclose the method of Claim 1, wherein the plurality of available cost allocation methods comprises a per usage time cost allocation method (col. 4, line 64 through col. 5, line 4; col. 9, lines 10-20).

As per claim 6, Al-Hilali et al. discloses a resource usage monitor may be a software application, a system utility, a hardware device external to the system that can measure resource usage, etc. For example, what percentage of the time a particular CPU was in use, how many disk accesses are made, and how much information was stored or retrieved per access, how much memory was used, etc (col. 9, lines 10-19).

Al-Hilali et al. still further disclose different ways and means may be used to determine the cost, in terms of each relevant system resource, for each of the identified transactions, and note that for purposes of this invention it is only important that such cost has been accurately determined (col. 11, lines 44-52).

Al-Hilali et al. does not expressly disclose wherein the plurality of available cost allocation methods comprises a per active days cost allocation method.

However, the Examiner takes Official Notice that it is old and well known to employ any number of cost allocation methods according to the system resource being consumed. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Al-Hilali et al. to include the feature of the cost per active days cost allocation since it is one of many methodologies used to allocate costs in the business industry.

As per claim 7, Al-Hilali et al. disclose the method of claim 1, wherein the plurality of available cost allocation methods comprises a per number of activities cost allocation method (col. 8, line 63-col. 9, line 10; col. 12, lines 11-40).

As per claims 8 and 14, Al-Hilali et al. disclose the method of claim 1, wherein the plurality of available cost allocation methods comprises a per processing time cost allocation method (col. 9. lines 10-19).

As per claims **9 and 15**, Al-Hilali et al. disclose the method of claim 1, wherein the determining resource usage by an organizational unit for each of the plurality of system resources comprises using a performance management system to collect usage data for one or more of the plurality of system resources (col. 10, line 61-col. 11, line 7).

As per claims **17 and 23**, Al-Hilali et al. disclose a system for allocating resource usage costs for usage of a plurality of system resources, the system comprising:

a usage analysis and cost allocation server comprising at least one processor and a memory, wherein the memory stores program instructions (abstract; [0037]-[0038]);

a usage analysis and cost allocation database which is coupled to the usage analysis and cost allocation server (col. 7, line 58- col. 8, line 3);

wherein the program instructions are executable by the at least one processor to ([0037]-[0038]):

determine a cost for each of the plurality of system resources (col. 4, lines 10-16);

store the cost for each of the plurality of system resources in the usage analysis and cost allocation database (col. 9, lines 30-45);

determine a cost allocation method for each of the plurality of system resources from a plurality of available cost allocation methods (col. 11, lines 44-52). {The Examiner interprets different ways and means may be used to determine the cost, in terms of each relevant system resource, for each of the identified transactions, and note

that for purposes of this invention it is only important that such cost has been accurately determined to mean determining a cost allocation method for each of a plurality of system resources from a plurality of available cost methods};

store the cost allocation method for each of the plurality of system resources in the usage analysis and cost allocation database (col. 18, lines 31-43);

determine resource usage by an organizational unit for each of the plurality of system resources (col. 6, lines 31-44); and

determine a cost of resource usage by the organizational unit based on the cost for each of the plurality of system resources, the cost allocation method for each of the plurality of system resources, and the resource usage by the organizational unit for each of the plurality of system resources (col. 4, lines 10-16).

Al-Hilali et al. does not expressly disclose wherein each of the plurality of available cost allocation methods defines a different way of dividing one of the determined costs; and storing the cost in a cost allocation database.

However, Fackre et al. disclose whether a user is concerned about the "soft costs" of lost of productivity or the "hard costs" of costly subscription sites, the invention is useful to quantify and allocate these costs to clients in proportion to their actual usage ([0009]). Fackre et al. further disclose in a reporting module, enhanced reporting, including detail and summary reports by user and/or by billing code are available using well-known relational database table functions; cost allocation for fixed cost resources may then be performed in which the total cost for a particular resource is divided portionally among client matter numbers based on the relative time each matter

consumed of the total usage of the resource; and for example, if resource Z cost a fixed $1000 per month, client A uses resource Z 10% of the time, and client B uses the same resource 90% of the time, then billing data may be generated attributing to client A a $100 charge and to client B a $900 charge ([0032]).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Al-Hilali et al. to include the feature of Fackre et al. in order to store/save costs in a cost allocation database for easy retrieval of cost information.

As per claim 18, Al-Hilali et al. disclose the system of claim 17, wherein each of the plurality of system resources comprises one or more cost elements, and wherein a cost allocation method is determined for each of the one or more cost elements (col. 2, lines 53-65).

As per claim 19, Al-Hilali et al. disclose the system of Claim 17, wherein the plurality of available cost allocation methods comprises a per usage time cost allocation method (col. 4, line 64 through col. 5, line 4).

As per claim 20, Al-Hilali et al. disclose the system of claim 17, wherein the plurality of available cost allocation methods comprises a per processing time cost allocation method (col. 9. lines 10-19).

As per claim 21, Al-Hilali et al. disclose the system of claim 17, wherein in determining the resource usage by an organizational unit for each of the plurality of system resources, the program instructions are executable by the at least one processor to use a performance management system to collect usage data for one or more of the plurality of system resources (col. 10, line 61-col. 11, line 7).

4.   Claim 3-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hilali et al. (US Patent Number 6,086,618), in view of Fackre et al. (US PG Pub. 2004/0030575), as applied to claim 1 above, and further in view of Applicant's Admitted Prior Art (AAPA).

As per claim 3, Al-Hilali et al. discloses different ways and means may be used to determine the cost, in terms of each relevant system resource, for each of the identified transactions, and note that for purposes of this invention it is only important that such cost has been accurately determined to mean determining a cost allocation method for each of a plurality of system resources from a plurality of available cost methods (col. 11, lines 44-52).

Al-Hilali et al. does not does not expressly disclose the method of claim 1, wherein the plurality of available cost allocation methods comprises a per license cost allocation method. However, AAPA disclose prior approaches have generally used "head counts" (e.g., number of software licenses), arbitrary percentages, fixed "taxation" models, and similar allocation models (page 3 [0005]).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Al-Hilali et al. to include the feature of AAPA in order to use different ways and means to determine the cost regarding system resource usage.

As per claim 4, Al-Hilali et al. does not expressly disclose the method of claim 1, wherein the plurality of available cost allocation methods comprises a per headcount cost allocation method. However, AAPA disclose prior approaches have generally used "head counts" (e.g., number of software licenses), arbitrary percentages, fixed "taxation" models, and similar allocation models (page 3 [0005]).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Al-Hilali et al. to include the feature of Fackre et al. and AAPA in order to use different ways and means to determine the cost regarding system resource usage.

5.   **Claims 10, 16, and 22** are rejected under 35 U.S.C. 103(a) as being unpatentable over Hilali et al. (US Patent Number 6,086,618), in view of Fackre et al. (US PG Pub. 2004/0030575), further view of Applicant's Admitted Prior Art (AAPA), as applied to claims 1, 11, and 17 above, and further in view of Morgan et al. (US Patent Number 5,799,286).

As per claims 10, 16, and 22, Al-Hilali et al. does not expressly disclose importing employee data from a human resources directory; and defining the organizational unit as a group of users based on the imported employee data.

However, Morgan et al. discloses in FIG. 8, the relational database 12 receives or <u>imports</u> three types of information from the existing computer 64. The first is the production measurement system information 150 wherein production measurement systems may capture product volume information by customer. A second type of information is general ledger information 152, which includes the reporting structure and the actual or budget dollar expenses for each of the cost pools. The reporting structure is the structure of the business organization's cost centers. A third type of information is <u>human resources information on employees</u>, which may include the employee name and number, job category, and the responsibility center.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Hilali et al. to include the features of AAPA, Fackre et al. and Morgan et al. in order to use data produced by another application to save time and cost determining allocation costs.

Examiner's Note

6.   Examiner cited particular pages, columns, paragraphs and/or line numbers in the references as applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures

may apply as well. It is respectfully requested that, in preparing responses, the applicant

fully consider the references in entirety as potentially teaching all or part of the claimed

invention, as well as the context of the passage as taught by the prior art or disclosed

by the examiner.

Conclusion

7.   The prior art made of record and not relied upon is considered pertinent to

applicant's disclosure (see form PTO-892).

       1) McKell, Lynn J., "Charging for Computing resources", June 1979, Computing

surveys, Vol. 11, No. 2, 16 pages.

       2) Doost, Roger K., "Cost and allocation methods for computer services", June 1,

1990, The National Public Accountant, (Allbusines.com); 7 pages.

8.   Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Freda A. Nelson whose telephone number is (571) 272-

7076. The examiner can normally be reached on Monday - Friday.

       If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, John Hayes can be reached on 571-272-6708. The fax phone number for

the organization where this application or proceeding is assigned is 571-273-8300.

       Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR

only. For more information about the PAIR system, see http://pair-direct.uspto.gov.

Should you have questions on access to the Private PAIR system, contact the

Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/F. A. N./
Examiner, Art Unit 3628

/John W Hayes/
Supervisory Patent Examiner, Art Unit 3628